



MEDIATION

A GUIDE TO MEDIATION IN THE FAMILY COURT

FAMILY COURT OF THE STATE OF DELAWARE

<http://courts.state.de.us/family>

What is mediation?

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2. Is mediation required in all cases?

Yes. Mediation is required in virtually all civil cases. The Court believes that all parties should attempt to mediate their differences and reach an agreement. Although a motion to bypass mediation may be filed, it would normally be granted only in exceptional situations.

3. Is mediation required in cases where there is domestic violence?

If there is a no contact order between the parties, if one of the parties is found to have committed an act of domestic violence against the other party, or one of the parties is a sex offender as defined by Delaware law, there will be no mediation of custody or visitation issues. Child support would, however, be mediated.

4. What will the mediator do?

The mediator will ask each party what their position is regarding the issue before the Court and attempt to facilitate agreement. If the parties come to an agreement, the mediator prepares a consent order which all parties sign. If no settlement is reached at mediation, the case will be scheduled for a formal court hearing. After the mediation, the mediator will also run a criminal history check of the parties and residents of their households. This information will be considered by the Commissioner or Judge when signing a consent or interim order.

5. How should I prepare for mediation?

You should complete all forms mailed to you and bring evidence to support your position with you to mediation (such as proof of support payments or medical statements from doctors). You are permitted, but not required, to bring an attorney to your mediation session. If you are considering obtaining an attorney, do so immediately as your mediation may not be continued to allow you time to secure the services of an attorney.

6. *Who can attend mediation?*

The petitioner and respondent must attend and their attorneys may attend. Children do not attend the mediation conference. Witnesses are not allowed for mediation.

7. *What happens if mediation is not successful?*

If no agreement is reached at mediation, the case will be scheduled for a formal court hearing. In custody/visitation cases, parents must complete a parent education program before their case is scheduled before a Judge. The mediator may recommend an Interim Order (a temporary order) for the Judge or Commissioner to sign if there is no prior Order for visitation or support.

8. *Can the mediator predict the outcome of my case if it goes to a Judge or Commissioner?*

No. Each case in Family Court is decided on the information presented at the hearing. However, in child support cases, the Judges and Commissioners usually follow the Delaware Child Support Formula which the mediator will calculate to determine an appropriate amount of support. Please remember that the mediator cannot give you legal advice.

9. *How do I request a continuance of my mediation?*

A request for a continuance is required to be made in writing to the appropriate mediator no less than five days prior to the mediation conference. The request must contain the following information:

- a. The original filing date of the petition.
- b. The position of the opposing party regarding the continuance request.
- c. The number of times the case has been scheduled.
- d. The reason the request is being made.

The mediator will consider all of the above in determining whether to grant the continuance.

10. *What happens if I do not appear for mediation?*

If you filed the petition, the mediator may recommend that the petition be dismissed. If you are the respondent and notice was sent to your last known address, the mediator may recommend that a capias be issued for your arrest or recommend a default order granting the relief requested by the petitioner.

11. *What if the other party and I reach an agreement outside of mediation?*

If you reach an agreement outside of mediation, you may write that agreement up on a consent order form (found online and in the resource centers) and file it with the Court. Until it is signed by a hearing officer, however, it is not a Court Order.